

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

76-1350

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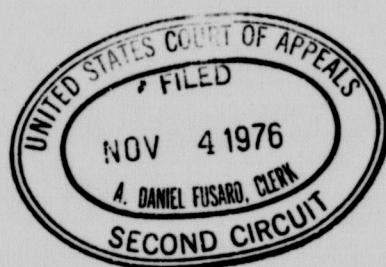
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :
Appellee, :
-against- :
PHILIP RASTELLI, et al, :
Defendants-Appellants. :
-----X

APPENDIX TO BRIEF ON BEHALF
OF PHILIP RASTELLI

SAKE, BACON & BOLAN, P.C.

Attorneys for Defendant-Appellant
Philip Rastelli
39 East 68th Street
New York, New York 10021
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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET	TITLE OF CASE	ATTORNEYS
	THE UNITED STATES	
	vs.	
	PHILIP RASTELLI, a/k/a "Rusty", "The Old Man"	For U. S.: WEINTRAUB
	LOUIS RASTELLI, ANTHONY DE STEFANO a/k/a	DESTEFANO- Jacob Escoff
	"Tony", "Deisty", CARL GARY PETROLE,	186 Joralemon Street
	WORKMEN'S MOBILE LUNCH ASSOCIATION, INC.	B'klyn, N.Y. TR5-0903
		PETROLE- Ernest J. Peace
		114 Old Country Road Mineola
		N.Y. (516) 294-9200
		For Defendant: LOUIS RASTELLI
		Gustave H. Newman- 522
		5th Avenue N.Y. 682-4066
		PHILIP RASTELLI- John J. Sutt
		33 Willis Avenue Mineola N.Y.
		(516) 747-5800

EXTINCTION

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		2/2/16	100.00	5 -	
Clerk,		2/2/16	50.00		5 -
Marshal,		2/2/16	5.00		5 -
Attorney,		2/3/16	5.00		5 -
Commissioner's Court,		2/3/16	5.00		5 -
Witnesses,		2/3/16	5.00		5 -

BEST COPY AVAILABLE

DATE	PROCEEDINGS
3/5/75	Before PLATT, J. - Indictment filed and ordered sealed by the Court
	Bench warrants ordered
3/6/75	Bench warrant issued
3/6/75	Before PLATT, J. - Case called- Defts produced on Court on bench warrant- Indictment ordered unsealed- Each deft arraigned and enter pleas of not guilty- bail set at \$50,000.00 P.R. Bond for deft Louis Rastelli, Bail set at \$50,000.00 surety bond for Philip Rastelli
3/6/75	Bench warrants retd and filed- executed (LOUIS and PHILIP RASTELLI)
3/11/75	Magistrates Proceedings received from District of New Jersey and filed Appearance-bond placed in vault (PETROLE)
3/14/75	Before PLATT, J. - Case called- Defts and counsel present- Deft Petrola and counsel present- deft arraigned and enters a plea of not guilty-Bail set at \$25,000.00 P.R. Bond secured - Limits extended to include N.J.

PROCEEDINGS	CLERK'S FEES	
	PLAINTIFF	DEFENDANT
Deft DeStefano's arraignment adjd without date- Case adjd to 4/18/75 for pre trial conference- bail limits extended to include S.D.N.Y. for deft Philip Rastelli		
5 Notice of Readiness for Trial filed.		
75 Before PLATT, J - case called - deft P. Rastelli & counsel John J. Sutter present - case adjd to 4-4-75 at 2:00 P.M. Certificate of Engagement issued to John Joseph Sutter, Esq.		
Before PLATT, J. - Case called- Adjd to 4/18/75 at 2:00 P.M. Before PLATT, J - case called - defts & counsels present - adjd to May 9, 1975 for status report.		
Before PLATT, J - case called - deft & counsels present - deft DE STEFANO arraigned and after being advised of his rights and on his own behalf enters a plea of not guilty - bail set at \$25,000 P.R.B. secured. Adjd to 9-5-75 to set a date for trial - bail contd as to each deft - adjd to May 23, 1975 at 2:00 PM.		
i Before PLATT, J. - Case called Deft and counsel present-Hearing ordered and begin-Hearing held and concluded		
5 Before PLATT, J - case called - deft PHILIP RASTELLI & attys present - adjd to Nov. 7, 1975 for status report)		
Before PLATT, J. - Case called- defts and counsel present- case adjd to 11/10/75 at 9:30 A.M.		
75 Before Platt, J - adjd to Nov. 14, 1975		
75 Petition for Writ of Habeas Corpus Ad Prosequendum filed(Rastelli)		
1-75 Writ Issued		
4-75 Before PLATT, J - case called - deft & counsel Mr. Wilson present - adjd to Jan. 5, 1976 for trial.(PHILIP RASTELLI)		
5 Writ retd and filed- executed (P. RASTELLI)		
Letter filed dated Dec. 2, 1975 from Gustave Newman for Corp. deft. Rastelli, waiving rights to a speedy trial, etc. (WORKMEN'S MOBILE LUNCH ASSN., Corp. defendant. (received from Chambers)		
5 Notice of motion for severance filed(LOUIS RASTELLI)		
5 Notice of motion for hearing to determine physical capacity to stand trial filed ret. 1/5/76 (PHILIP RASTELLI)		
By PLATT, J.- Order filed that U.S. Marshal deliver deft Philip Rastelli for purpose of physical examination,etc.		
Before PLATT, J.- Case called- deft and counsel present- case adjd to 3/29/76 at 9:30 A.M. (PHILIP RASTELLI)		

75 CR-160
CRIMINAL DOCKET

DATE	PROCEEDINGS
1-5-76	Order returned and filed - executed (deft Rastelli)
3-19-76	before PLATT, J - case called - defts & counsel present - adjd to 4-29-76 for trial.
3-24-76	Stenographers transcript dated 3-19-76 filed.
3/25/76	Before PLATT, J. - Case called- defts and counsel present- Deft Philip Rastelli's motion for extention of time for trial- motion denied submit
3/19/76	order by PLATT, J. - Order filed that deft - P. Rastelli be examined
3/25/76	Certified copy of order for physical exam for deft Philip Rastelli retd and filed- executed
3-29-76	Before PLATT, J - case called - defts & attys present - trial ordered - court fines J. J. Sutter, attorney for deft Philip Rastelli \$1000 a day for failure to appear - such fine to run daily contingent upon his appearance in court - all other attorneys are deemed engaged on trial - deft Louis Rastelli motion for severance - granted on consent - xxxxx contd to 3-30-76 at 9:30am
3-30-76	Stenographer's transcripts dtd March 24 & 29, 1976 filed.
3-30-76	Before PLATT, J - case called for trial - defts & attys present - Atty J.J. Sutter motion to set aside imposition of \$1,000 fine to be imposed daily for Atty Sutter failure to appear for trial - motion denied but fine is modified to the extent that Atty Sutter is fined \$500 a day from 3-29-76, 3-30-76, 3-31-76 making a total of \$1500 in fines. Atty Sutter is relieved as Atty as of 4-1-76 when substitution of counsel will be effected for deft Philip Rastelli. Deft Corp. Workmen's Mobile Lunch Assoc. motion to sever - granted on consent. adjd to 4-1-76 for trial.
3-30-76	By PLATT, J - Memorandum and Order filed imposing on Mr. Sutter, Counsel for deft Philip Rastelli, costs of \$500 a day for each day of delay, i.e., Monday, Tuesday and Wednesday, March 29-31* or a total of \$1500 payable to this Court.
4-1-76	Before PLATT, J - case called - defts & attys present - adjd to 4-5-76 for trial
4-5-76	Before PLATT, J - case called - defts & attys present - trial ordered & BEGUN - Jurors selected and sworn - Trial contd to 4-6-76.
4-6-76	Before PLATT, J - case called - trial resumed - trial contd to 4-7-76

PROCEEDINGS

Before PLATT, J - case called - trial resumed - Trial contd to 4-8-76

Notice of Appeal filed. (atty. Sutter)

Docket entries and duplicate of Notice of Appeal mailed to the Court of Appeals.

Before PLATT, J - case called - trial resumed - trial contd to 4-12-76.

5 Before PLATT, J - case called - trial resumed - deft De Stefano motion for a mistrial - motion denied - Trial contd to 4-13-76. Philip

76 Before PLATT, J - case called - trial resumed - Deft/RASTELLI's motion to dismiss - decision reserved - Deft De Stefano motion to dismiss and for a judgment of acquittal - denied - resevered cts. 5-7; deft Petrolo motion to dismiss - trial contd to 4-14-76.

6 Before PLATT, J - Case called- defts and counsel present- trial resumed deft's motions previously made denied- deft Philip Rastelli rests- trial contd to 4/15/76

5 Before PLATT, J - case called - trial resumed - trial contd to 4-19-76

16 Before PLATT, J - case called - trial resumed - trial contd to 4-20-76

5 Before PLATT, J - case called - trial resumed - Govts motion to dismiss count 3 granted on consent, each deft renews all motions previously made - motions denied - Trial contd to 4-21-76.

Before PLATT, J - Case called- defts and counsel present- trial resumed jury retires to deliberate- order of sustenance signed- trial contd to 4/22/76

6 By PLATT, J - Orders(4) of sustenance and order of lodging filed

6 Before PLATT, J - Case called- defts and counsel present- jury resumes deliberations- order of sustenance signed - trial contd to 4/23/76

6 By PLATT, J - Orders of sustenance(4) and Lodging(1) filed

Before PLATT, J - case called - trial resumed - Jury resumes deliberations. Jury returns with a verdict of guilty on counts 1, 2, 5 & 7 as to defts P. RASTELLI & PETROLE; not guilty on count 4 as to deft RASTELLI; guilty as to counts 1, 2, 4, 5 & 7 as to deft DE STEFANO. sentences adjd without date - all motions adjd to date of sentence. bail contd for defts PETROLE & DE STEFANO - deft RASTELLI in custody - jury discharged - trial concluded.

6 10 Volumes of stenographers transcripts filed.

6 Stenographers Transcript of 4/23/76 filed

DATE

RECEIVED

4-29-76 Record on Appeal certified and mailed to the C of A

4/30/76 Stenographers Transcript dated 3/30/76 filed

5-3-76 Order received from the Court of Appeals filed that the record be docketed on or before May 28, 1976

5-5-76 Acknowledgment received from the Court of Appeals for receipt of record on appeal.

5-7-76 Copy of Opinion and Order filed received from the Court of Appeals denying petition for mandamus.

5-18-76 Before PLATT, J - case called - bail application substitution of security - no opposition - motion granted - deed accepted(Petrole)

5-25-76 Stenographers transcript filed dated 4-21-76.

6-9-76 Notice of motion filed and Memorandum of Law in support of deft Rastelli's motion to set aside the verdict, granting deft new trial, etc.

6-18-76 Before PLATT, J - case called - deft RASTELLI & counsel Roy Cohn present - Deft-PETROLE & atty present verdict defts motion to set aside/- denied - deft motion for a hearing on pre sentence report - granted - hearing set down for June 25, at 2:00 PM/bail contd pending appeal. Deft's sentenced on count 1 to imprisonment for 1 year under 18:4205(b)(2) and to pay a fine of \$5,000; deft sentenced on count 2 to imprisonment for 5 years under 18:4205(b)(2) - sentence to run concurrently with sentence in count 1 and to pay a fine in the sum of \$5,000; Deft sentenced on count 5 to imprisonment for 5 years under 18:4205(b)(2) - sentence to run concur. with sentence in counts 1 and 2 and to pay a fine of \$5,000 Deft sentenced on count 7 to imprisonment for 5 years under 18:4205(b)(2) -sentence to run/concur. with the sentences in counts 1, 2, and 5 and to pay a fine of \$5,000.

6-18-76 Judgment and commitment filed - certified copies to Marshal (Petrole)

6-24-76 Notice of appeal filed (PETROLE)

6-24-76 Docket entries and duplicate of Notice of appeal mailed to the court of appeals

6-25-76 Before PLATT, J - case called - deft DE STEFANO & atty William Sonenshine present - on count 1 deft is sentenced to imprisonment for 1 year pursuant to 18:4205(b)(2) and to pay a fine of \$5,000; on count 2 to imprisonment for 4 years pursuant to 18:4205(b)(2) and to pay a fine of \$5,000; sentence to run concurrently with sentence imposed in count 1; on count 4 deft is sentenced to

PROCEEDINGS

imprisonment for 4 years pursuant to 18:4205(b)(2) and a fine of \$5,000; sentence to run concurrently with sentence imposed on counts 1 and 2;

on count 5 deft is sentenced to imprisonment for 4 years under 18:4205(b)(2) to run concurrently with sentence imposed on counts 1, 2 & 4 and to pay a fine of \$5,000; on count 7 to imprisonment for 4 years pursuant to 18:4205(b)(2) and to pay a fine of \$5,000; sentence of imprisonment to run concurrently with sentence imposed on counts 1, 2, 4 & 5.

11 (\$20,000 surety) contd pending appeal.

Judgment and commitment filed - certified copies to Marshal (DE STEFANO) Before PLATT, J. - case called - deft PHILIP RASTELLI & counsel Roy Cohn present - hearing on pre sentence report ordered and begun - hearing contd to July 23, 1976 at 2:00 P.M.

6 Notice of appeal filed (De Stefano)

Docket entries and duplicate of notice mailed to the court of appeals (De Stefano)

Before PLATT, J. - Case called. Deft PHILIP RASTELLI present. Hearing resumed.

Hearing contd. to 7/30/76 at 2:00 p.m.

6 Record on Appeal certified, and mailed to the Court of Appeals.

Before PLATT, J. - Case called. Deft & Counsel present. Hearing on pre-sentence report reserved. Hearing concluded. Sentence set down for 8/27/76 at 10:00 a.m. (PHILIP RASTELLI)

Acknowledgment received from the Court of Appeals that the Index to Record on appeal has been received. (ANTHONY DE STEFANO)

Stenographers transcript filed dated June 25, 1976 (RASTELLI)

Before PLATT, J - case called - deft P. RASTELLI & counsel J.Lang present. deft is sentenced on count 1 to a term of imprisonment of 1 year pursuant to 18:4205(b)(2) and to pay a fine of \$20,000; on count/deft is sentenced to imprisonment for 10 years pursuant to 18:4205(b)(2) plus fine of \$10,000; on count 5 deft is sentenced to imprisonment for 10 years pursuant to 18:4205(b)(2) plus fine of \$10,000 - sentence of imprisonment to run concurrently to sentence imposed on counts 1 and 2 on count 7 deft is sentenced to imprisonment for 10 years pursuant to 18:4205(b)(2) such sentence to run concurrently with sentence imposed on counts 1, 2 & 5 and to pay a fine of \$10,000.

76 Judgment and commitment filed - certified copies to Marshal (P.RASTELLI)

Notice of Appeal filed.

Docket entries and duplicate of Notice of Appeal sent to the Court of Appeals. RASTELLI, LOUIS, PHILIP, DE STEFANO, CARL, GARY PETROLE.

CRIMINAL DOCKET

JUDGMENT AND PROBATION/ COMMITMENT ORDER 8A

SWORN

United States District Court for

United States of America vs.

DEFENDANT

SWORN

Eastern District of New York

PHILIP RASTELLI

DOCKET NO.

75 CR 160

In the presence of the attorney for the government
the defendant appeared in person on this dateMONTH DAY YEAR
8 27 1976

COUNSEL

 WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

 WITH COUNSELJohn Lang, Esq.
(Name of counsel)

PLEA

 GUILTY, and the court being satisfied that
there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTYFINDING &
JUDGMENT

There being a finding/verdict of

 NOT GUILTY. Defendant is discharged GUILTY. in counts 1, 2, 5 & 7

Defendant has been convicted as charged of the offense(s) of violating T-15, U.S. Code, Sec. 1, in that from on or about the 10th day of January 1966 until the return of the indictment, the defendant did knowingly engage in a combination and conspiracy in restraint of trade; and in violating T-18, U.S. Code, Secs. 1951 and 2 in that the defendant and others did combine, conspire, confederate and agree together to obstruct, delay and affect commerce

SENTENCE
OR
PROBATION
ORDER

IT IS ADJUDGED on count 1 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one (1) year and that the defendant shall become eligible for parole under T-18, U.S.C. Sec. 4205 (b)(2) at such time as the Board of Parole may determine and defendant shall pay a fine to the United States in the sum of \$20,000;

SPECIAL
CONDITIONS
OF
PROBATION

IT IS ADJUDGED on count 2 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of ten (10) years and that the defendant shall become eligible for parole under T-18, U.S. Code, Sec. 4205(b)(2) at such time as the Board of Parole may determine, such sentence of imprisonment to run concurrently with the sentence imposed under Count 1, and defendant shall pay a fine to the United States in the sum of \$10,000;

ADDITIONAL
CONDITIONS
OF
PROBATION

IT IS ADJUDGED on count 5 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ten (10) years and that the defendant shall become eligible for parole under T-18, U.S. Code, Sec. 4205(b)(2) at such time as the Board of Parole may determine, such sentence of imprisonment to run concurrently (cont'd on page 2)

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years, committed by the Court, may issue a warrant and revoke probation for a violation occurring during the probation period.

DEPARTMENT
of COMMERCE
COMMIS-
SION

8A-1

The court orders commitment to the custody of the Attorney General and recommends,

U. S. DEPARTMENT OF COMMERCE

Aug 2 1970

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other public office.

MAILED BY

U. S. DEPARTMENT OF COMMERCE

U. S. DEPARTMENT OF COMMERCE

(cont'd)

U.S.A. vs. Philip Rastelli

75 CR-160

with the sentence imposed on counts 1 and 2 and defendant shall pay a fine to the United States in the sum of \$10,000; and

IT IS ADJUDGED on count 7 of the indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of ten (10) years and that the defendant shall become eligible for parole under Title 18, U.S. Code, Sec. 4205(b)(2) at such time as the Board of Parole may determine, such sentence to run concurrently with the sentence imposed on Counts 1, 2 & 5 and defendant shall pay a fine to the United States in the sum of \$10,000;

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

596
4024
4949

UNITED STATES OF AMERICA

BEST COPY AVAILABLE

-v-

PHILIP RASTELLI, a/k/a "Rusty", The Old Man"
LOUIS RASTELLI, ANTHONY DE STEFANO, a/k/a
"Tony", "Deisty", CARL GARY PETROLE,
WORKMEN'S MOBILE LUNCH ASSOCIATION, INC.

INDICTMENT
18 U.S.C. §1951,
1961, 1962(c) & 2
15 U.S.C. §1

Defendants

4,2,5,7

THE GRAND JURY CHARGES:

COUNT ONE

NOT UNCONSCIONABLE REQUEST
NOT SUBSTANTIAL
No T interference

1. The following association and named individuals are hereby indicted
and made defendants herein:

SAC LIM

A. Philip Rastelli, a/k/a "Rusty", "The Old Man";
B. Louis Rastelli;
C. Anthony De Stefano, a/k/a "Tony", "Deisty";
D. Carl Gary Petrole;
E. Workmen's Mobile Lunch Association, Inc. (hereinafter referred to
as the "Association")

2. At all times pertinent hereto, the Association was a New York
corporation having its principal place of business within the Eastern District
of New York.

3. The defendant Association is composed of about sixty (60) members
who are owners or drivers of mobile lunch trucks. During the period covered by
this indictment, Association members and other mobile lunch truck owners and
drivers have regularly purchased substantial quantities of foods and beverages
which were shipped by manufacturers and distributors from without the State of
New York into the State of New York. Said foods and beverages purchased by the
defendant Association's members and other mobile lunch truck owners and drivers
were sold from mobile lunch trucks to members of the public at various locations

10A
in the Eastern District of New York. Mobile lunch truck owners and drivers usually follow routes which consist of several locations at which there are large concentrations of people at certain times of the day. There is a regular, continuous and substantial flow of food and beverages for sale from mobile lunch trucks in interstate commerce.

4. During the period covered by the indictment, owners and drivers of mobile lunch trucks, including Association members and nonmembers, purchased trucks and equipment all or part of which were manufactured outside the State of New York and which moved in interstate commerce into the State of New York.

5. Commencing in or about 1966 to in or about 1970, CARL GARY PETROLE was president of the Association, and Joseph Occhiogrosso was the Secretary-Treasurer.

6. Commencing in or about 1970 and continuing up to the date of this indictment, LOUIS RASTELLI was the President of the Association.

7. Commencing in or about 1970 and continuing up to the date of this indictment ANTHONY DE STEFANO was the Secretary-Treasurer of the Association.

W O ~~Secretary~~ 8. At all times pertinent hereto, PHILIP RASTELLI was in fact in control ~~Secretary~~ of the Association and responsible for founding, supervising and directing the activities of the Association.

9. From on or about the 10th day of January, 1966, the exact date being unknown, and continuously thereafter up to and including the date of the return of this indictment, within the Eastern District of New York and elsewhere, the Association, PHILIP RASTELLI, a/k/a "RUSTY", and "THE OLD MAN", LOUIS RASTELLI, CARL GARY PETROLE and ANTHONY DE STEFANO, a/k/a "TONY" and "DEISTY", the defendants herein, along with various co-conspirators not named as defendants herein, knowingly engaged in a combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce described in paragraph three of Count One of this indictment in violation of Section 1, Title 15, United States Code, commonly known as the Sherman Act.

10. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants and

... and substantial terms of which have been and are:

- a. To allocate locations among Association members for the sale of foods and beverages; and
- b. To restrain nonmembers of the Association from soliciting or competing in the sale of foods and beverages at locations served by Association members.

11. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do.

12. The aforesaid combination and conspiracy has had the following effect, among others: competition between and among the defendants, Association member mobile lunch truck owners and drivers and non-Association member mobile lunch truck owners and drivers has been suppressed and eliminated.

(Title 15, United States Code, Section 1)

COUNT TWO

NO EXTORTION - NO THREAT
PEACEFUL ATTEMPTS TO DO THIS

1. Each and every allegation contained in paragraphs numbered two (2) through eight (8) of Count One of this indictment is here re-alleged with the same force and effect as though said paragraphs were set forth in full detail.

2. From on or about the tenth day of January, 1966, and continuously thereafter up to and including the first day of December, 1972, the exact date being unknown to the Grand Jury, in the Eastern District of New York and elsewhere, PHILIP RASTELLI, a/k/a "Rusty" and "The Old Man", LOUIS RASTELLI, CARL GARY PETROLE and ANTHONY DE STEFANO, a/k/a "Tony", "Deisty", the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with diverse other persons to the Grand Jury unknown, to obstruct, delay and affect commerce as that term is defined in Section 1951 of Title 18, United States Code, and the movement of articles and commodities in such commerce, by extortion as that term is defined in Section 1951 of Title 18, United States Code.

3. It was a part of the conspiracy that the said defendants would obtain and attempt to obtain the property of Edward Colucci, Jr.

Frank Morgan, that is, the right to service a mobile catering truck account, with the consent of Edward Sadera, Robert Frank and Frank Morgan, such consent to be induced by the wrongful use of actual and threatened force, violence and fear by the said defendants in that the said defendants would commit acts of violence upon the persons and property of Edward Sadera, Robert Frank and Frank Morgan and others unless and until Edward Sadera, Robert Frank and Frank Morgan would cease and desist from servicing a certain mobile catering account which account Edward Sadera, Robert Frank and Frank Morgan were lawfully entitled to service.

4. It was a part of the conspiracy that the said defendants would obtain and attempt to obtain the property of David Levy, that is, the right to continue to solicit and service mobile catering accounts with the consent of David Levy, such consent to be induced by the wrongful use of actual and threatened force violence and fear by the said defendants, in that the said defendants threatened to commit acts of violence upon the person of David Levy unless and until David Levy would cease and desist from solicitation and service of certain mobile catering accounts, which accounts David Levy was lawfully entitled to solicit and service.

5. It was a part of the conspiracy that the defendants would, through harassments and threats of economic harm, obtain and attempt to obtain United States currency of One Stop Catering and Ralph Stingo, Augustus Stingo and Paul Spector; William Bruce and Bruce Vending Company; Paul Gellman; Kathy's Caterers and Kathleen Cardineau; Plain & Fancy Caterers and Alfred Boccio; and J & J Caterers and Joseph Massino. All in violation of Title 18, United States Code, Sections 1951 and 2.

(Title 18, United States Code, Sections 1951 and 2)

COUNT THREE

No Threats

1. Each and every allegation contained in paragraphs numbered two (2) through eight (8) of Count One of this indictment is here realleged with the same force and effect as though said paragraphs were set forth in full detail.
2. From on or about the tenth day of January, 1966 and continuously thereafter up to and including the first day of December, 1972, the exact dates being

unknown to the Grand Jury, in the Eastern District of New York and elsewhere
13A
PHILIP RASTELLI, a/k/a "Rusty" and "The Old Man", LUCIO MATTIELI, a/k/a "Big
PETROLE and ANTHONY DE STEFANO, a/k/a "Tony" and "Deisty", the defendants,
being persons employed by and associated with an enterprise the activities of
which affect interstate commerce, to wit, an association and group of individuals
known as the Workmen's Mobile Lunch Association, unlawfully, wilfully and know-
ingly did conduct and participate directly and indirectly, in the conduct of such
enterprise's affairs through a pattern of racketeering activity, that is, a
series of acts and threats involving extortion and constituting coercion and
extortion in violation of New York Penal Law, Section 135.65 and Title 18, United
States Code, Section 1951 and additional acts and threats an obstruction of
justice in violation of Title 18, United States Code, Section 1593, in that (a)
the defendants compelled and induced Edward Sadera, Robert Frank, Frank Morgan,
David Levy and others to abstain from engaging in conduct in which they had a
legal right to engage, that is the right to solicit and service mobile catering

accounts by instilling in them a fear that the defendants or others would
cause physical injury to some persons in the future and cause damage to their
property, (b) the defendants, through harassments and threats of economic
harm, obtained and attempted to obtain United States currency of One Stop
Catering and Ralph Stingo, Augustus Stingo and Paul Spector; William Bruce
and Bruce Vending Company; Paul Gellman; Kathy's Caterers and Kathleen
Cardineau; Plain & Fancy Caterers and Alfred Boccio; and J & J Caterers and
Joseph Massino, and (c) the defendants corruptly did endeavor to influence
obstruct and impeded the due administration of justice in the United States
District Court for the Eastern District of New York, in that said defendants
knowing that one William Bruce had received a subpoena to appear before the
Grand Jury inquiring in said District into possible violations of the extortion
laws, urged and advised William Bruce to give false testimony before said Grand
Jury in relation with the aforesaid violation.

(Title 18, United States Code, Sections 1961, 1962(c) & 2)

In or about April, 1972, in the Eastern District of New York, the defendants

Philip Rastelli, a/k/a "Rusty" and "The Old Man", Louis Rastelli, Carl Gary Petrole and Anthony James De Stefano, a/k/a "Tony" and "Deisty", unlawfully, wilfully and knowingly attempted to and did obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18, United States Code, and the movement of articles and commodities in such commerce, by extortion, in that they obtained and attempted to obtain property from David Levy, and deprived him of the use of such property, to wit, the right to solicit and service certain mobile catering accounts, through the wrongful use of actual and threatened force, violence and fear.

(Title 18, United States Code, Sections 1951 and 2)

COUNTS FIVE THROUGH SEVEN

CCG, 3/31/73

On the approximate dates hereinafter set forth in Counts Five through Seven, in the Eastern District of New York, the defendants, Philip Rastelli, a/k/a "Rusty" and "The Old Man", Louis Rastelli, Carl Gary Petrole and Anthony James De Stefano, a/k/a "Tony" and "Deisty", unlawfully, wilfully and knowingly attempted to and did obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, in that they obtained and attempted to obtain United States currency from the commissaries and food suppliers hereinafter identified, with their consent induced by the wrongful use of force and fear, in that the defendants did threaten to cause and did cause mobile catering truck owners and drivers who were members of the Association to refrain from dealing with said commissaries and food suppliers unless and until they paid the defendants certain sums of money:

<u>COUNT</u>	<u>DATES</u>	<u>COMMISARIES OR FOOD SUPPLIER</u>
--------------	--------------	-------------------------------------

5 In or about the Fall of 1972 One Stop Catering, Ralph Stingo, Augustus Stingo and Paul Spector

6 In or about early 1972 One Stop Catering, Ralph Stingo, Augustus Stingo, and Paul Spector

7 From on or about Apr. 5, 1971 Bruce Vending Company and continuously through and including on or about Sept. 7, 1971 William Bruce

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Docket Number

75 Cr. 1460

- against -

PHILIP RASTELLI, LOUIS RASTELLI, Hon. Thomas C. Platt
ANTHONY DeSTEFANO, and CARL (District Court Judge)
GARY PETROLE,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that PHILIP RASTELLI appeals to the United States Court of Appeals for the Second Circuit from the Judgment order other (specify) conviction entered in this action on 27th day of August, 1976 (Date)

SAXE, BACON & BOLAN, P.C.
(Counsel for Appellant)Date September 3, 1976

Address

39 East 68th Street
New York, New York 10021
(212) 472-1400

To:

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Phone Number _____

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

► QUESTIONNAIRE

► TRANSCRIPT ORDER

► DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

I am ordering a transcript
 I am not ordering a transcript

Reason:

Daily copy is available except
 U.S. Attorney has placed order
 Other. Attach explanation

Prepare transcript of
 Pre-trial proceedings
 Trial
 Sentence
 Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ► Method of payment Funds CJA Form 21

ATTORNEY'S signature

DATE

9/3/76

► COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

Petition for Writ of
Mandamus

Last Copy
16A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PHILIP RASTELLI,

Petitioner, :

- against - :

HONORABLE THOMAS C. PLATT, UNITED
STATES DISTRICT JUDGE,

PETITION FOR WRIT OF
MANDAMUS

Respondent.

Comes now Philip Rastelli, Petitioner in the above-entitled action, and petitions this Court to issue a writ of mandamus directing Honorable Thomas C. Platt, Judge of the United States District Court for the Eastern District of New York, to issue a writ of mandamus directing said judge to grant a continuance of the trial of the petitioner in the case of United States v. Philip Rastelli, et al., 75 Cr. 160, from March 29, 1976, to April 5, 1976. Additionally Mr. Rastelli petitions this Court for an order staying the trial of this action before the respondent until such time as this Court determines whether or not the writ of mandamus shall issue and for such other and further relief to this Court may seem just and proper.

The facts supporting this petition are as follows: petitioner was indicted on or about May 1, 1975, on seven counts of violations of 18 U.S.C. §§ 1951, 1951, 1962(c) and 15 U.S.C. § 1951. Pursuant to this seven count indictment petitioner faces potential incarceration for the rest of his natural life. The petitioner retained the law firm of Sutter, Moffatt, Yannelli & Zevin, p

to defend him in the action. No pre-trial motions were made on behalf of the petitioner and a trial date of March 29, 1976 was set. During the week of March 15, 1976, the petitioner advised the firm of Saxe, Bacon & Bolan, P.C., that he wished them to undertake his defense in the criminal matter. To date said firm has not been officially substituted for the petitioner's prior counsel. On March 19, 1976 and again on March 24, 1976, the respondent denied petitioner's application for a one week continuance, which was desired so that his new counsel could familiarize themselves with the matter and prepare a defense for Mr. Rastelli. On both occasions the respondent denied this application, despite the fact that the Assistant United States Attorney consented and joined in the application for the continuance.

The issue herein presented is as follows: whether or not a writ of mandamus should issue from this Court to the respondent directing him to grant a continuance of the trial until April 5, 1976, on the basis that a refusal by him to do so seriously prejudices the petitioner's right to adequate and prepared representation by counsel.

The relief sought by this petition is the issuance of a writ of mandamus directing the consent to grant a continuance of the criminal trial of the petitioner until April 5, 1976 and a stay of all proceedings in the criminal indictment, including but not limited to the trial of this action, until such time as this Court shall determine the propriety of the issuance of the writ.

The writ should be issued for the following reasons:

1. Petitioner's present counsel is not adequately prepared to defend petitioner in this multi-count criminal indictment;

2. The petitioner has requested that the firm of Saxe,
18A
Bacon & Bolan, P.C., undertake his representation on the trial of
this matter;

3. By virtue of the inaction of the petitioner's present
counsel, whether by neglect or inadvertence, the direction of
the respondent that the trial should commence on March 29, 1976
will seriously prejudice the petitioner's right to adequate
representation;

4. Should the writ not issue from this Court, the
petitioner will be forced to go to trial with unprepared counsel,
thus raising the strong possibility that his rights will be inade-
quately protected;

5. In an attempt to protect the rights of the defendant
and afford him a fair trial, the United States government has
joined in the petitioner's application to the respondent to grant
the one week continuance;

6. John Satter, Esq., the attorney who was to try the
case on behalf of the petitioner, and whom the firm of Saxe,
Bacon & Bolan, P.C. wishes to replace, is presently on trial and
will not be available for the March 29, 1976 date.

Attached hereto as part of this petition are the follow-
ing orders, opinions and parts of the record necessary for an
understanding of the issues herein presented:

1. Exhibit A, transcript of March 24, 1976, U.S. v.
Philip Rastelli, et al.;

2. Exhibit B, transcript of March 19, 1976, U.S. v.
Philip Rastelli, et al.;

3. Exhibit C, decision of the United States Court of
Appeals, Stans v. Gagliardi, 485 F.2d 1290 (2nd Cir., 1973).

WHEREFORE, petitioner prays (1) that a writ of mandamus
issue from this Court granting a continuance in this matter until

April 5, 1976; (2) that this Court grant a stay of all proceedings
19A
in the case of U.S. v. Philip Rastelli, et al., 75 Cr. 160, until
such time as this Court shall determine whether or not the writ
shall issue; (3) for such other and further relief as to this
Court may seem just and proper.

Dated: March 26, 1976
New York, New York

Yours, etc.,

Samuel B. Baxt
SAXE, BACON & BOLAN, P.C.
Attorneys for Petitioner
39 East 68th Street
New York, New York 10021
(212) 472-1400

TO: UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Federal Building
40 Centre Street
New York, New York 10007

HONORABLE THOMAS C. PLATT
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

By *Julian*

Affidavit of Thomas A. Bolan, Esq., in Support of
Petition for Writ of Mandamus

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

X

PHILIP RASTELLI, :
Petitioner, :
- against - : AFFIDAVIT
HONORABLE THOMAS C. PLATT, :
Respondent. :
X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

THOMAS A. BOLAN, being duly sworn, deposes and says:

I am counsel to the firm of Saxe, Bacon & Bolan, P.C.,
attorneys for defendant Philip Rastelli.

This affidavit is submitted in support of the petition
for a writ of mandamus directing Judge Platt to grant the one
week continuance in the above-entitled proceeding, to which one
week continuance the government has agreed in view of the
emergency facts detailed herein. If said continuance is not
granted, irreparable damage to both the defendants and the govern-
ment may occur. This case presents an extraordinary set of facts,
which we respectfully urge should properly be dealt with by this
Court through the mandamus procedure and in the exercise of its
regulatory power over the District Court.

scheduled to commence on Monday, March 29, 1976 and the continu-
ance agreed to by the government is only for one week, a stay is
respectfully requested so that this petition will not be academic.

The mandamus route to this Court was specifically invited by Judge Platt, who requested that the minutes below containing his direction be attached, which we are doing as Exhibit A to this petition.

21A

The facts are these. Mr. Rastelli is one of several defendants in a multi-count indictment charging violation of the Sherman Act, the Hobbs Act and 18 U.S.C. §1962. The indictment was returned in March of 1975. Petitioner Rastelli engaged John Sutter, Esq., of Nassau County to try this case. Mr. Sutter represents Mr. Rastelli in another action pending in Suffolk County Court. This case was on the calendar in January, 1976, at which time the government asked for and obtained an adjournment until March 29, 1976, which was a date that was agreed to by all counsel. The government advised that its direct case would take six weeks, and Judge Platt apparently blocked out that period of time for its trial. Approximately two weeks before the trial was to commence, Mr. Rastelli discovered that Mr. Sutter was engaged in another trial and could not try this case, and that furthermore Mr. Sutter's office had done absolutely nothing to prepare the case. Mr. Sutter conceded to Mr. Rastelli that they were totally unprepared and unable to go forward. Mr. Rastelli promptly contacted our firm and on March 19, 1976, Michael Rosen, Esq., one of our partners, appeared before Judge Platt to request a short continuance so that we could give to the case at least the minimum preparation that might make a fair trial for the defendant possible.

At the hearing before Judge Platt, Stephen P. Wilson, Esq., of Mr. Sutter's office, appeared before Judge Platt and made the following statement:

"Our office . . . has not given this case the attention it deserves. I feel, perhaps I am primarily to blame for not bringing to this [sic] Mr. Sutter's attention. Nonetheless, the preparations have been spotty, to say the least. I do not blame Mr. Rastelli for desiring to change counsel, and I hope this Court is not prepared to penalize him for what I feel is my office's neglect." (Transcript of March 19, 1976, pp. 3, 4)

Mr. Rosen stated that our firm would accept the engagement and be ready for trial if a short adjournment were granted. Judge Platt flatly refused, citing a statement that he had been told after his appointment to the bench that:

"You are going to find when you get to Brooklyn . . . that every time you set a case for trial . . . one week before the trial you are going to get at least one application from another attorney who is going to walk in and say I want to have a substitution and we want an adjournment as a result thereof." (Transcript of March 24, 1976, pp. 5, 6 - Exhibit A)

Judge Platt flatly denied any kind of a continuance to enable our firm to prepare a defense. Another counsel, Mr. Evseroff, had a problem with an actual engagement before Judge Weinstein, which Judge Platt solved by telling Mr. Evseroff to go back and forth between two courtrooms and do the best he could.

On Wednesday, March 24, 1976, Roy M. Cohn, Esq., of our firm, appeared before Judge Platt, as did the Assistant United States Attorneys who are to try the case. At that time the Prosecutor announced to the Court that the government was disturbed with the counsel situation in view of the admission of the Sutter office that they had been totally negligent in failing to prepare the case and in being unable to go forward with it. The Prosecutor advised the Court that the government had conceded that it would consent to a severance motion by one of the other defendants which would shorten the trial by about two weeks. The Prosecutor continued that with those extra two weeks to work

with the government would consent to a one week adjournment in order
23A
to enable our firm to come in and represent Mr. Rastelli.

Presented with the government's conclusion that this one week adjournment was called for in view of the extraordinary and undisputed factual situation and the government's having recast the case so as to permit a one week's adjournment and still save an additional week's trial time over the estimate given to the judge - Judge Platt remained immovable. He told the government it had "no say." He kept saying that "Mr. Rastelli at this point wants to change his mind and get another counsel," completely ignoring the fact that Mr. Rastelli did not suddenly decide to change his mind, but had concededly been advised at the 11th hour that his counsel had negligently failed to prepare a case and go forward. Judge Platt invited a mandamus to the Court of Appeals concerning the week's adjournment, stating that "then it is on their bounds [sic] to foul up my calendar, and every other calendar in this court for the rest of the Spring, and if they want to interfere with the District Court's calendar, God bless them."

Judge Platt then went into a diatribe concerning the failure of the Congress to vote an additional judge for the Eastern District because the bill is "bottled up until the elections," and because the President has not named a successor to Judge Travia. After visiting the sins of the President and the Congress on this particularly hapless defendant, Judge Platt concluded: "The answer is no, and I direct you to order this record and to take it to the Court of Appeals if they mandamus me."

This Court, of course, had occasion to deal with this issue in the Mitchell-Stans case. The majority recommended that an adjournment be granted, which recommendation was accepted by the trial judge. The facts in this case cast the situation well beyond that in the Mitchell-Stans case and into another dimension.

elements relied on by Judge Lombard in his dissenting opinion,
24A
in which he opined that his Court should sustain the right of
mandamus and direct an adjournment rather than merely make a
recommendation to the court below. This is a situation where
because of an obdurate and unreasoning refusal to grant a one
week's continuance in view of an undisputed collapse of defendant's
right to counsel with a concession that the fault was totally
apart from the defendant himself, and with the government present-
ing . . . a solution which would result in an actual net saving of
a week of Judge Platt's blocked out time in this trial - Judge
Platt's throwing down the gauntlet to the Court of Appeals, the
President and the Congress at the expense of this hapless defend-
ant, must call for the exercise of this Court's authority to
prevent a manifest injustice both to the defendant and to the
government. Such an injustice can hardly be corrected after a
large multi-defendant, multi-count trial, when its solution has
been agreed upon by both the government and the defendant and
has been placed before the Court at this juncture.

In the case of Stans v. Gagliardi, 485 F.2d 1290 at
1291 and 1292 (2nd Cir., 1973), this Court stated, in reference
to the policy of said trial in criminal cases that:

"These considerations must be carefully weighed
against a defendant's claim of need for a short
delay to permit proper preparation and the risk
that overruling such a claim may undermine a
conviction obtained after many weeks of trial."

". . . a postponement of trial for a few weeks
is at small price to pay for stilling
complaints, even if they were unjustified,
that these defendants had not been given a
fair opportunity to prepare their case and
for avoiding an issue which will almost cert-
ainly continue during the trial and will be
presented on appeal if defendants should be
convicted."

As Judge Lombard stated in his dissent in Stans,

"[o]f even more importance than the prompt disposition of a criminal case is the requirement that the trial be a fair one so that justice may be done." Stans v. Gagliardi, supra at 1293.

WHEREFORE, it is respectfully prayed that a writ of mandamus issue from this Court directing the respondent to grant a continuance of the trial in the criminal matter until April 5, 1976; that all proceedings in said criminal action be stayed pending a determination of this petition, and that this Court grant the petitioner such other and further relief as seems just and proper.

Sworn to before me this
25th day of March, 1976

THOMAS A. BOGAN
PROTHONOTARY
CLERK OF THE COURT
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CLERK OF THE COURT
CLERK OF THE COURT

Opinion of United States
Court of Appeals for the
Second Circuit on Petition
for Writ of Mandamus

26A
(Submitted March 29, 1976)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

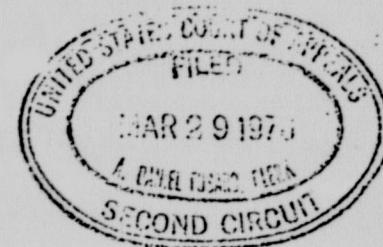
Decided March 29, 1976)

Docket No. 76-3018

Philip Rastelli,
Petitioner,

v.

Hon. Thomas C. Platt, United States
District Judge for the Eastern
District of New York,
Respondent.



Before OAKES and GURFEIN, Circuit Judges, and PIERCE,
District Judge.*

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1 has been no official substitution for prior counsel.
2 Applications made on March 19, 1976, and again on
3 March 24, 1976, for a one-week continuance for the
4 purposes of new counsel being enabled to familiarize
5 themselves with the case were denied. The denials
6 occurred despite the fact that the Assistant United States
7 Attorney consented^{to} and joined in the application for a
8 continuance.

9
10 Under Stans v. Gaagliardi, 485 F.2d 1290 (2d Cir.
11 1973), we do not have the power to hear this matter
12 either as an appeal from an interlocutory order or on
13 the within petition for a writ of mandamus; as we said
14 there, the alternative would result in a deluge of
15 applications to the court of appeals "for the postponement
16 of criminal trials, with consequent delay even though few
17 petitions were to be granted." 485 F.2d at 1292.

18 At the same time, as in the case of Stans v.
19 Gaagliardi, supra, we can see no reason for the failure to
20 grant the simple one week's continuance requested. The
21 Speedy Trial Rules have important and significant purposes,
22 to be sure. But those must be carefully weighed against
23 a defendant's claim of need for a short delay to permit
24 proper preparation, especially where a substitution of
25 counsel in a case involving possible imprisonment for life
26 is concerned. Beyond that here, evidenced strongly by
27 the United States Attorney's consent to the application for
28 a continuance, is the risk to the public that, notwithstanding
29 the defendant's claim, no one is paid to defend him.

Gagliardi, supra, 485 F.2d at 1291, "undermine a conviction obtained after many weeks of trial."

We deny the petition for mandamus under the law of this court as above stated, but we do so with the earnest request to the trial judge that he reconsider the equities, interests and policies underlying his denial of the request for a continuance.

Petition denied.

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1 THE COURT: I called this case this afternoon
2 because I got together with Judge Weinstein. I tracked
3 him down in Albuquerque. Judge Weinstein --

4 MR. BRONSTEIN: Mr. Essaroff.

5 THE COURT: Mr. Essaroff knew we had this
6 engagement on March 29th. He should have informed
7 him. However, we can work it out so that Mr. Essaroff
8 can start before Judge Weinstein on Wednesday.

9 Mr. Essaroff will be released to pick a jury on
10 March 29th, before this Court in this case and it is
11 not going to be any impediment for this case to
12 proceed. So, that takes care of that question.

13 MR. BRONSTEIN: There are two other matters
14 that came to the Court's attention since we called
15 for a pre-trial conference. First of all, we under-
16 stand there is a plan by Mr. Phillip Rastelli to
17 change counsel. Second of all, the other remaining
18 matter will be the physical condition of Louis Rastelli.

19 THE COURT: Who is for Phillip Rastelli?

20 MR. WILLSON: My name is Stephen Willson.

21 THE COURT: Mr. Willson?

22 MR. WILLSON: That is correct. Our office,
23 and Mr. Sutter, who is currently engaged in a murder
24 trial before Judge Zamenga in County Court, Nassau
25 County, has not given this case the attention it

1 deserves. I feel, perhaps, I am primarily to blame
2 for not bringing to this Mr. Sutter's attention. None-
3 theless, the preparations have been spotty, to say
4 the least. I do not blame Mr. Rastelli for desiring
5 to change counsel, and I hope this Court is not
6 prepared to penalize him for what I feel is my office's
7 neglect.

8 THE COURT: I will not penalize him. If he
9 wishes to change counsel, he can. The case is going
10 on the 29th regardless if he changes counsel.

11 MR. WILLSON: Further, your Honor, I would
12 like you to consider the medical situation.

13 THE COURT: One step at a time. Do you under-
14 stand what I am saying on this particular point?
15 He can take anybody he wishes as new counsel, provided
16 appropriate substitutions are executed, but he does
17 so with the express understanding that we are going to
18 trial on March 29th. This engagement was set several
19 months ago, and I just indicated to Essaroff's attorney,
20 it has inconvenienced every other judge in this
21 court, this case. I have been asked by the Chief Judge
22 to take another case that is under a 90-day gun, and
23 the Chief Judge, and every other Judge is recognizing
24 my engagement with this case on March the 29th. The
25 Strike Force has kept Mr. Weintraub on their payroll

1 for this case. It is not going to be adjourned.

2 Mr. Sutter can fulfill his obligation to his client.

3 If he can't do it, somebody else can come in and try
4 it. If it is not done properly, he is accountable to
5 his client. He has known about this trial date. It
6 is not going to be adjourned.

7 MR. ROSEN: We have been contacted by
8 Mr. Rastelli several days ago to come in and represent
9 him in this case.

10 THE COURT: I told you the condition.

11 MR. ROSEN: I know what was said. I think
12 counsel's candor in Mr. Sutter's office compels your
13 Honor to reconsider.

14 THE COURT: There is going to be no reconsidera-
15 tion.

16 MR. ROSEN: If in fact your Honor does allow
17 our firm to represent --

18 THE COURT: Mr. Justice Clark of the United
19 States Supreme Court, when I saw him a year and a half
20 ago in Washington, when I was sent down there after I
21 had been appointed to the bench, said to me, at that
22 time, "Judge Platt, one of those things you are going
23 to find when you get to Brooklyn is that every time you
24 set a case for trial and give the attorneys a firm date,
25 one week before the trial date you are going to get

1 at least one application from another attorney who is
2 going to walk in and say I want to have a substitution
3 and we want an adjournment as a result thereof."
4 He said, there's only one way to deal with that problem.
5 That is to say, you may have that substitution, but
6 you're going to trial. I have found that to be the
7 truth, unfortunately enough. I don't know why it is
8 peculiar to this Court, but attorneys in this metropoli-
9 tan area must realize that this is the ruling. It is
10 a ruling that is uniform throughout both the Southern
11 and Eastern Districts, and it is not going to be varied
12 in this case.

13 MR. ROSEN: I appreciate your Honor's position.
14 I would suggest to your Honor that in fact I have no
15 doubt Mr. Sutter's office has --

16 THE COURT: If they want to confess wrong,
17 that is their problem, but it is not my problem. It
18 is not your problem. You don't have to take the case.
19 They have to try the case. They took the case. They
20 are responsible for it. You do not have to get
21 yourself into this situation.

22 MR. ROSEN: I'm aware of that. Your Honor,
23 I am trying to speak from the standpoint of Mr. Rastelli's
24 rights.

25 THE COURT: There is no suffering of his

1 personal rights. This case was adjourned to the
2 March 29th date at everybody's request. This was the
3 date they picked. I didn't pick it.

4 MR. ROSEN: I am aware of that, Judge, but I
5 don't believe your Honor would even permit for one
6 second a man to go to trial whose counsel is not
7 prepared.

8 THE COURT: He's got his problems with his
9 counsel. He picked the counsel. This is not a court-
10 assigned counsel. This is a counsel he picked.

11 MR. ROSEN: I am aware of that, too. I think,
12 most respectfully, the man's liberty is at stake, and
13 if this attorney represents to us that he has failed
14 in his obligation, he should not be penalized.

15 THE COURT: They had better get to it between
16 now and the 29th.

17 MR. WILLSON: Your Honor, in view of the request,
18 I don't understand the importance of this particular
19 case, which is one count of the Sherman Anti-Trust
20 Act, and several counts of the Hobbs Act, must commence
21 on March 29th. If Mr. Rastelli does wish a change of
22 counsel, and we have, as I stated, not adequately
23 prepared for, if he wishes new counsel to come and --

24 THE COURT: I understand the importance of the
25 case.

1 MR. WILLSON: I am asking most respectfully --
2 Judge, I don't know why it is so important that it must
3 commence on March 29th to Mr. Rastelli's prejudice.

4 THE COURT: It is not to Mr. Rastelli's pre-
5 judice. This not a new case. This bears a 75 CR 160.
6 This has been on the calendar for one solid year.
7 Under the new rules enacted by Congress it should
8 have been tried six months ago.

9 MR. WILLSON: In that regard, Judge, I would
10 like to make it clear why Mr. Rastelli is currently
11 incarcerated and is not on the bail that has been set
12 and posted in this court. He's in jail on the testimony
13 of one man, a former bail bondsman, admitted forger
14 of the County Court judge's signature. That man's
15 case is over four years old. In fact, it was on this
16 morning in Riverhead. That man's trial is the reason
17 for Mr. Rastelli's incarceration now, and while we
18 can't get his own doctor to perform his operation.
19 That man's indictment is over four years old. There
20 have been over 10 adjournments. It has been adjourned
21 to this morning. It appeared nowhere on the calendar
22 except that the administrative judge's clerk told me
23 that the folder was in the back and would be sent out
24 back somewhere.

25 THE COURT: This is not Suffolk County.

1 MR. WILLSON: I am aware, Judge. I am trying
2 to give the background for the problem we are facing
3 here, and why this man can't get the surgery he needs,
4 and why I feel somehow that there is some magic to
5 the name that everybody that everybody wants to go
6 after Mr. Rastelli. Maybe I'm a bit paranoid, but I
7 know this particular man, and his testimony was
8 allowed to convict him, and is the reason that he is
9 in prison. He is represented by a prestigious law firm
10 in Suffolk County. He was under a perjury and forgery
11 indictment. No motions were ever made, and yet, this
12 witness at the trial swore up and down, he said he
13 made no deal for his testimony either with Mr. Nadjari

14 THE COURT: What have I to do with that?

15 Mr. WILLSON: This man is in jail on a writ
16 brought this Court on the Washington case basis.
17 Judgement came down to the Second Circuit.

18 THE COURT: We're not here to consider that.

19 MR. WILLSON: I think we ultimately will be when
20 we see why he has not been able to get his surgery,
21 and were it not for this particular thing, I think they
22 are looking for a big name, scalp, to put on their belt
23 in Suffolk County, and perhaps this is the situation
24 here.

25 THE COURT: This is not the situation here. This

1 case is one of the oldest criminal cases I have got.

2 It's not the oldest criminal case I have. It is going
3 to be tried on March 29th.

4 MR. WILLSON: This is the feeling I get.

5 THE COURT: Do you want to look at my calendar?

6 Look at the rest of my calendar. Walk into my chambers,
7 ask the law clerk to look at my calendar. If this
8 isn't one of the oldest cases I have, I will reconsider.
9 I am sure it is.

10 MR. WILLSON: I would request --

11 THE COURT: You are not singled out.

12 MR. WILLSON: I would respectfully request,
13 absent an extreme prejudice to the Government, that
14 your Honor reconsider and allow new counsel.

15 THE COURT: I understand the Government has been
16 preparing for this case for some period of time. I am
17 informed that, and I may be incorrectly informed, that
18 the Government has kept Mr. Weintraub on the payroll
19 for the purposes of trying this case. Otherwise,
20 Mr. Weintraub has left the office. He is assigned to
21 try this case. This Court has to try this case. We
22 are not going to make exceptions for the reasons I
23 have indicated to you.

24 MR. ROSEN: If your Honor please, we would need
25 a reasonable time, of 30 days.

1 THE COURT: You can work as co-counsel if you
2 wish. You may not impose upon the Court in this
3 fashion.

4 MR. ROSEN: Perhaps the Court has overlooked
5 the fact that Mr. Rastelli's situation --

6 THE COURT: The Government will take six weeks
7 to try. If you can't get your thoughts together in
8 six weeks to present any defense, I really don't feel
9 too sorry for you.

10 Is that right, Mr. Weintraub, it would take
11 six weeks to try?

12 MR. WEINTRAUB: That's correct, your Honor.

13 MR. ROSEN: Your Honor didn't let me finish.

14 Mr. Rastelli has been incarcerated, as I understand it,
15 on a State case. I physically saw, and I wish your
16 Honor would perhaps have the stomach to see what I
17 saw is in this man's stomach. This man has been in
18 jail. Perhaps that's why his lawyers cannot prepare
19 its case, and this is not some kind of late-minute
20 merry-go-round to delay a trial. This is well founded
21 and based on the circumstances, with no intention
22 of a delay, per se. This man has a growth coming out
23 of his stomach that is unreal. I don't blame him if
24 he can't communicate too good. He is unintelligible.
25 I have a doctor's report that states it is coming out

1 of the man's stomach. There are substances here, most
2 respectfully, that would warrant my application.

3 THE COURT: No summations at this time.

4 MR. BRONSTEIN: Mr. Rosen is addressing himself
5 to a probable reason for judgement based upon medical
6 history. I believe we ought to reserve for the moment.
7 I assumed we were still addressing ourselves to the
8 change of counsel before we get into the medical.

9 I would like to be heard on that.

10 MR. WILLSON: I would request that your Honor
11 reconsider.

12 THE COURT: I am not going to make any changes.
13 Every other case in this court at the moment has been
14 inconvenienced as far as I understand by this case.
15 It is going ahead. I have relayed to all of the judges
16 that this was a date requested by the defendants, and
17 it was a date firmly fixed several months ago, and I
18 have moved my calendar around, and moved all sorts of
19 other litigants around. If you don't believe that is
20 so, you can ask any of the other people that have
21 appeared in the last few weeks. All have been told
22 that the time for March 29th has been reserved for
23 this case because of this gentleman. This is the date
24 you picked. I am not going to set the world aside for
25 Mr. Rastelli or anybody else. That ends that.

1 half a day there.

2 MR. EVSEROFF: judge, I must say, I 've never
3 tried two cases at the same time, but I am always
4 willing to learn. But listen, you can only try one
5 at a time, and that is what I have a partner for.
6 Might I know what date this is scheduled for?

7 THE COURT: Monday.

8 MR. WEINTRAUB: That is correct. The other
9 problem is a representation of Mr. Philip Rastelli.

10 THE COURT: I thought I made my position about
11 the appearance.

12 MR. WEINTRAUB: You did, Your Honor. The
13 government has considered the situation as to Philip
14 Rastelli. Yet, quite frankly, we are somewhat con-
15 cerned about the situation. We have concluded that
16 we had consented to the severance of Louis Rastelli.
17 That should shorten this trial, Your Honor, by about
18 a third. Instead of the anticipated six weeks in
19 direct, I think it is fair to say the direct will be
20 concluded in four weeks. Because of that, and because
21 even the appearance that Mr. Rastelli may not have
22 adequate representation, based on his current counsel's
23 admission to your Honor that he has not prepared the
24 government would consent to a one week adjournment.

25 THE COURT: The government has no say in this

1 matter. The court is not going to grant any adjournment.

2 Mr. Philip Rastelli has had in my book one of the best
3 law firms in Suffolk County. Mr. Sutter is a well-
4 known, and as I understand it, a very competent
5 attorney. I don't for one minute for one minute believe
6 that Mr. Sutter is not capable of trying this case.

7 Mr. Philip Rastelli, at this point of the game, wishes
8 to substitute counsel, and he does so. If counsel
9 wishes to undertake a representation of this case
10 after it's present posture for a year and a couple of
11 months, they do so at this count. There is no danger
12 that I see in this. There was a date set by the
13 parties and their counsel. The trial was set, and
14 everybody said they would be ready. And I have moved
15 everything around in this court, and in several other
16 courts, to have this space available starting March
17 29th for this trial and I am not going to change. The
18 judges in this court have a very busy schedule. In
19 this case it is not fair. Just because Mr. Rastelli
20 at this point wants to change his mind and get another
21 counsel. I make my position abundantly clear. You
22 can mandamus me to the Court of Appeals, and if they
23 say under these circumstances that I must grant a
24 week's adjournment, then it is on their bounds to
25 foul up my calendar, and every other calendar in this

1 court for the rest of the Spring, and if they want to
2 interfere with the District Court's calendar, God
3 bless them.

4 MR. COHN: May it please the court. My name is
5 Roy Cohn of the firm of Saxe, Bacon and Bolan. Mr.
6 Rosen was out here the other day. As your Honor has
7 been told, this matter came to us very recently through
8 a friend and client of our firm. I talked to Mr.
9 Rastelli for the first time yesterday. Mr. Rosen has
10 talked to him on a couple of occasions. If there was
11 the usual case for counsel juggling or something that
12 would institute an interference with the court calendar
13 I can fully understand Your Honor's position, but based
14 upon what we know, these weaknesses, lawyers have and
15 clients have in this last minute juggling, once in
16 a while there does come an honest situation.

17 THE COURT: I am not procuring anyone's honesty
18 at this stage. In such a case where a case has been
19 pending for over a year, just at this point he has to
20 take the consequences.

21 MR. COHN: That is what I am addressing myself
22 to. We are not talking about one year. We are talking
23 about one week. Mr. Weinberger has told your Honor
24 this morning that by a severance that has been granted,
25 a third of the trial is being cut off. So the termination

1 date for Your Honor's conclusion will be met. In
2 fact, it will be better than your Honor had allowed
3 for, so there is absolutely no adverse effect on the
4 calendar of this court or the administration of
5 justice.

6 THE COURT: That is why you have no idea what
7 you are talking about.

8 MR. COHN: I really don't?

9 THE COURT: Making a statement like that.

10 MR. COHN:: I am sure it is my inexperience and--

11 THE COURT: It certainly is. It portrays a
12 definite inexperience. You will understand why you
13 are so ignorant. I want to treat you with the utmost
14 courtesy. In this kind of a case, at this juncture,
15 I am not being mean and harsh and arbitrary and un-
16 reasonable. I am charged with the responsibility of
17 trying I don't know how many cases in this District,
18 and also with a backlog of civil cases, going back to
19 1969. Plaintiffs yelling at me that they want some
20 relief, and I can't just return my calendar that day.

21 MR. COHN: Your Honor, a third of the case
22 before you has now been eliminated, so that your
23 completion date will be way ahead of the time.

24 THE COURT: If your client plead guilty tomorrow
25 it wouldn't alleviate my situation, except by a drop

1 in the bucket. You don't understand what I am saying.
2 We are two judges short in this court. We have been
3 waiting for a year and a half for a replacement for
4 Judge Travia who resigned in November a year and a
5 half ago. Congress for 5 years has promised us an
6 additional judge. That bill is still bottled up until
7 elections in the fall of 1976. Judge Neere just
8 collapsed from exhaustion because he couldn't keep
9 the pace any more, and he is in St. Cumberland Hospital,
10 and you are in here saying to me that you want to
11 bottle up my calendar. The answer is no, and I direct
12 you to order this record and to take it to the Court
13 of Appeals if they mandamus me.

14 MR. COHN: Your Honor, should your Honor enter
15 a formal order to this as a prelude to the mandamus,
16 a judgement on a one-week continuance consented to
17 by the government. But, if your Honor brings this as
18 being a crumbling of justice --

19 THE COURT: Go ahead.

20 MR. COHN : (continuing) Should we submit a
21 formal order.

22 THE COURT: Go ahead.

23 MR. WEINTRAUB: My office has discussed this
24 with Mr. Trager and it is under consideration whether
25 any summary action should be recommended against

1 Mr. Sutter's office based on the representations made
2 in this court.

3 THE COURT: Whether I should take any summary
4 action?

5 MR. WEINTRAUB: Whether you should consider his
6 office, perhaps an order to show cause for contempt or
7 its disciplinary action based on Mr. Sutter's repre-
8 sentation here. That is just under consideration,
9 your Honor.

10 MR. COHN: Fortunately, your Honor, we have the
11 situation where I am sure Mr. Sutter must have some
12 excuse or reason. I hope it is a good one why the
13 prior counsel stands up and says "We haven't just pre-
14 pared this case." And I guess the fairness calls for
15 that a defendant is not pilloried anytime, and whether
16 there is an admission as to whether the fault lies.
17 We would all solve this by a one week adjournment in
18 which a new counsel could come in without being delayed.
19 If this rents a seam in your Honor's plans, I am afraid
20 we have all tried so hard to do something that is going
21 to solve the problem.

22 THE COURT: I said all I am going to say.

23 MR. COHN: Thank you, Your Honor.

24 MR. WEINTRAUB: Thank you.

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1 Excerpts from Pre-Trial Conference of March 29, 1976
2 THE CLERK: United States v. Philip Rastelli,
3 Louis Rastelli, Anthony De Stefano and Carl Gary
4 Petrole.

5 MR. WEINTRAUB: Good morning, your Honor.

6 MR. LANG: My name is John Lang from the firm of
7 Saxe, Bacon and Bolen. I am not sure at this point
8 whether we represent anyone.

9 THE COURT: I am not so sure that you do. It
10 didn't occur to your firm that you pointed out to the
11 Court of Appeals that you didn't represent Mr. Rastelli
12 when you took the mandamus pleading.

13 MR. LANG: I understand there has been no
14 formal institution. If that is the requirement, of
15 course it hasn't been done, but yesterday, for example,
16 I went down to see Mr. Rastelli at the Federal House of
17 Detention, and again I don't know whether we have
18 representation or what. I know Mr. Wilson was here
19 from the firm of Sutter, Moffatt, Yanrelli and Zevin
20 representing Mr. Rastelli.

21 THE COURT: As far as I know, he still is.

22 MR. LANG: I am not arguing with you on that.

23 THE COURT: I have nothing in my files to show
24 there was a substitution.

25 MR. LANG: You see --

46A
1 THE COURT: What are you here for? How can you
2 come in and talk for a formal substitution substituting
3 yourself as counsel? I don't understand this type of
4 practice. Maybe it has changed without my knowing it.
5 It has always been my understanding that a person had
6 to be formally retained and had to file a notice of
7 appearance if you are going to appear for him and talk
8 in court. It hasn't occurred to you that you brought a
9 mandamus with respect to this case to the Court of
10 Appeals, file papers in here made applications, and so
11 forth, and you are still not substituted.

12 MR. LANG: You know, Judge, we are in this kind
13 of a hiatus where there is a question of the attorney
14 of record who is supposed to be here. Mr. Wilson is
15 here.

16 MR. WILSON: Mr. Sutter is actually engaged.

17 THE COURT: I talked to Judge Semanka to find
18 out whether Mr. Sutter was engaged, and I discussed
19 with him a certificate of engagement in this court.
20 When I got Mr. Sutter's affidavit on Friday, I was
21 amazed that such an affidavit should be filed, and
22 there was no reference in that affidavit that he had
23 made application to the Court in that case that he was
24 actually going to be engaged on another trial here,
25 and Judge Semanka confirmed the fact that no such
application had been made to him and he was totally

5

1 unaware of it. He said that had he known it, he would
2 have honored the engagement here. Under the circum-
3 stances, I don't see that I can honor Mr. Sutter's
4 application.

5 MR. WILSON: I think everybody had known that the
6 trial would go --

7 THE COURT: Mr. Wilson, it makes no difference
8 whatsoever. If Mr. Sutter is not going to fulfill his
9 professional responsibility to the various courts in
10 which he appears, I am certainly not going to honor his
11 engagement.

12 MR. WILSON: Perhaps that is the problem.

13 THE COURT: If he took too much, then he has to
14 suffer the consequences.

15 MR. WILSON: Judge, I don't think the 180-day
16 ruling was designed to --

17 THE COURT: In fairness, you are going to have
18 to try the case.

19 MR. WILSON: His defendant currently faces a
20 maximum exposure of a lifetime imprisonment.

21 THE COURT: I say I think you are going to have
22 to try the case.

23 MR. WILSON: The defendant does not want me to.

24 MR. PHILIP RASTELLI: I don't retain Mr. Wilson.

25 THE COURT: You retain a firm.

1 MR. WILSON: No, sir, your Honor. That is not
2 correct. Mr. Rastelli's agreement --

3 THE COURT: The only alternative you leave me,
4 Mr. Wilson, is to fine Mr. Sutter.

5 MR. WILSON: That is the alternative.

6 THE COURT: You speak for Mr. Sutter, as well.
7 If you want me to fine Mr. Sutter as a result of his
8 contact, I will. The other alternative is for you to
9 go to trial.

10 MR. WILSON: Judge --

11 THE COURT: You are ready.

12 MR. WILSON: Incidentally, Judge, I have the
13 latest doctor's report on Mr. Rastelli pursuant to his
14 examination on the 19th, which I have provided copies to
15 the U.S. Attorney, and to Mr. Lang's firm in regard to
16 the physical condition. Judge, while we are on it, it
17 is interesting to notethat I sought a writ of habeas
18 corpus similar to the relief that I sought here in the
19 Supreme Court in New York County. They refused to sign
20 the writ because they said the federal courts had
21 jurisdiction. And so that currently is in total limbo,
22 but that is the status of that particular matter. I
23 don't see how I can fairly try this case for
24 Mr. Rastelli when he desires me not to try this case.
25 When he desires Mr. Sutter as counsel, who was

understood would be his counsel upon trial.

THE COURT: Well, Mr. Wilson, if you are going to take that position and Mr. Sutter is not here, and you are going to refuse to try the case, the alternative would be a fine of \$1,000 a day on Mr. Sutter until he appears.

MR. WILSON: Is that without a hearing, Judge?

THE COURT: I don't see I have any alternative. If Mr. Sutter wants to come in and be heard, fine. He is not here.

MR. WILSON: Judge, I would like an opportunity, could you call Judge Semanka to see if he would release him for a period of time?

THE COURT: I did. He said he would not.

MR. WILSON: Judge Semanka would not release him to come in here?

THE COURT: He said he would release him for a two- or three-day trial.

MR. WILSON: Just, your Honor, for discussing the fine of \$1,000 a day, regarding this particular matter.

THE COURT: I didn't discuss the potential fine. I said I would have to discuss.

MR. WILSON: I would like an opportunity, then, Judge, to make contact with Mr. Sutter, if I could, and tell him of the situation in order that he may get

1 permission of Judge Semanka and address the Court on it.

2 THE COURT: You may.

3 MR. WILSON: Thank you.

4 THE COURT: Go ahead and make a telephone call,
5 and we will call it again in a few moments.

6 MR. NEWMAN: My client is not here yet, Judge.

7 THE COURT: I thought you just had the
8 corporation to deal with. I thought you were going to
9 sever the case.

10 MR. BORNSTEIN: I heard from the hospital about
11 ten after nine, and they said that Mr. Louis Rastelli
12 was on the way. I don't know where he is at this point,
13 but certainly he is not in the hospital.

14 MR. LANG: Your Honor, may I be excused? I just
15 got a call from my office. It is urgent.

16 MR. NEWMAN: May we leave the presence of the
17 Court, Judge?

18 THE COURT: Yes.

19 (Time noted: 10:30. Recess taken.)

20 MR. WILSON: I just spoke to Mr. Papa of our
21 office, Judge. He is the businessman who will be
22 writing the \$1,000 checks, and he is going over to
23 Judge Semanka's part and see if he can get Mr. Sutter
24 to contact your Honor's chambers.

25 THE COURT: I don't think it is going to do him

1 any good to contact my chambers. If he wants to come in
2 here --

3 MR. WILSON: Yes, sir. With regard to speaking
4 to your Honor about getting in here to talk to you
5 about this.

6 THE COURT: I am here. He can come in at any time.
7 As far as I can see, I assume you are just going to
8 refuse to go ahead. I want to check on the notice of
9 appearance on your firm's stationery. If your firm
10 appeared you may have a problem.

11 Apparently, John Joseph Sutter appears.

12 MR. WILSON: I believe the certificate of
13 engagement was issued in the name of John Joseph Sutter.

14 THE COURT: Regardless of it, it looks like he
15 has got another problem. I think, so that the record
16 is clear, I would like to recite the facts with
17 respect to the record in this case which are quite
18 different from the record that was presented to the
19 Court of Appeals in the mandamus proceeding. So that
20 the record will be clear as to why the Court is taking
21 the actions it proposes to take. The docket sheet
22 shows that on March 5th a seal of indictment was filed
23 and ordered sealed in this case on March 5 of 1975, and
24 on March 6th, the defendant was produced on a bench
25 warrant, all except for one of the defendants.

1 De Stefano, and the indictment was unsealed, and on
2 March 14th there was another arraignment. In this case
3 the Government filed its notice of readiness on
4 March 18th, and on March 21st I called the case for
5 trial and said that it would go forward in the trial on
6 April 4th of 1975.

7 On April 2nd I got a telegram from Mr. Sutter's
8 office asking for an adjournment and saying that
9 Mr. Rastelli had just been admitted to the hospital.
10 That was the first application for a last-minute
11 application that was for an adjournment. That is a
12 full year ago.

13 On April 18th, it was recalled again for a
14 status report.

15 On May 9th it was recalled again, and
16 Mr. De Stefano was arraigned. On May 23rd there was a
17 hearing held. The case was set down for September 5th
18 for a trial. On that date there was a further request
19 by the defendant for an adjournment to November 7th
20 with the understanding that we would go to trial the
21 following week on November 10th. At that time a
22 further request for an adjournment was made by the
23 defendants for a trial date, and at that date they
24 wanted the trial was right after the 1st of the year.

25 I told them I would hold my calendar open. On

1 December 29th, another last-minute motion was made by
2 the defendant, Philip Rastelli, to adjourn, asking for
3 a hearing to determine the physical capacity of
4 Mr. Philip Rastelli to stand trial.

On January 2nd, an adjournment was requested so
that additional medicals could be obtained with respect
to that hearing, and I signed an order having the U.S.
Marshals deliver Philip Mastelli for the purpose of the
physical examination, and on that date, if my memory
serves me correctly, I asked the defendant on what
date they would be ready for trial. All of the
defendants picked March 29th.

19 My recollection is that I gave them that. I
20 told them to make it known to any court where they were
21 involved that they would be involved here at this court
22 and they all assured me that they would be here and
23 ready on March 29th. Just shortly before that, my
24 chambers began to get rumors of further applications
25 for adjournment, so I asked counsel to appear on

Now, gentlemen, it was not in any sort of being
arbitrary or unreasonable. I recite that history
because I think it's completely at variance to what has
been presented to the Court of Appeals in the Second
Circuit. But those are the facts of this case, and
that is the history of this case, and that is the reason
why this Court wants to go to trial today.

(continued next page)

1 MR. WEINTRAUB: Might I supplement that? On
2 January 2nd the Government made a motion for adjournment
3 because a key Government witness had undergone surgery.

4 THE COURT: On what day?

5 MR. WEINTRAUB: January 2nd, and we represented
6 to the Court that based on the recovery period, the
7 doctors had estimated that the earliest days the
8 Government would be prepared to go forward with that
9 would be March 1st, and then there were conversations
10 in front of your Honor, and a date agreeable to all was
11 reached at March 29th.

12 THE COURT: I just got word that the Court of
13 Appeals denied the writ, but requested that it be
14 considered under the denial of the request for a
15 continuance, and they conceded that they have no power
16 under Stans v. Gagliardi, to grant the writ.

17 Gentlemen, for the reasons I have just stated,
18 if this thing had been properly presented to the Court
19 of Appeals, I would think some basis would be merited,
20 but I don't see any basis for the request. I don't
21 think that any of these were presented to the Court of
22 Appeals. I think the record I just recited here, instead
23 of being the facts supporting this Petitioner as
24 follows, you say to the Court of Appeals, "The
25 Petitioner was indicted on or about March 5, 1975.

1 Pursuant to the seven-count indictment, the Petitioner
2 faces potential incarceration for the rest of his
3 natural life. The Petitioner has retained the law firm
4 of Sutter, Moffatt, Yannelli and Zevin, P.C. to defend
5 him in the action. No pretrial motions were made on
6 behalf of the petitioner, and a trial date of March 29,
7 1976 was set."

8 As if a year and a couple of months had gone by
9 with nothing happening in this case, and I have just
10 finished reciting what happened in this case, and if
11 there ever was a misleading statement given to a court,
12 and what I think was a wholly reprehensible statement.
13 In the light of what transpired, there was.

14 As far as I am concerned, the case is ready, and
15 as far as I am concerned, Mr. Sutter is. If his firm
16 is not prepared to try it, he is going to have to pay
17 the consequences. I can't force Mr. Wilson on trial,
18 unfortunately, because he pointed out he did not file
19 a firm notice of appearance. But all I can do is fine
20 Mr. Sutter. So I will impose a contingent fine of
21 \$1,000 on Mr. Sutter for his failure to appear in
22 accordance with the mandate of this Court.

23 I will give him an opportunity to address this
24 Court and be heard on the subject, and I will call the
25 case on a day-by -day basis with all other attorneys

1 being deemed engaged until Mr. Sutter is free.

2 MR. PEACE: Might I request I be permitted to
3 contact the Court and be notified when I would actually
4 be needed here? I have a practice to look after.

5 THE COURT: Mr. Peace, I agree. I am very
6 sympathetic to you, but if I don't require you gentlemen
7 to appear as if you are on trial here, the next thing I
8 know, one of you is going to be on trial in some other
9 case. As far as I am concerned, you are on trial here,
10 and I am not going to let this happen again in this
11 case. I should never have let Mr. Sutter even get out
12 of here on January 2nd. I should have held him here
13 from January 2nd to date.

14 MR. PEACE: I would not start another trial.

15 THE COURT: Mr. Sutter started another trial.

16 MR. PEACE: I am not talking about Mr. Sutter.
17 I am talking about myself right now, and I would just
18 request that I be contacted and be told whether I have
19 absolutely to be here, and if he tells me to come, I
20 will come. It is a long trip, and I am preparing now
21 for a long trial and there are so many things that I
22 can do to help earn my living in my own office. I
23 have not shown this Court any courtesy in any event.

24 THE COURT: I don't think you have, Mr. Peace.
25 As long as you are fully cognizant of the fact that

1 you are fully engaged, if you don't appear you know what
2 the penalty will be.

3 MR. PEACE: If you tell me to come, I will come.

4 THE COURT: I don't know when Mr. Sutter is
5 going to appear and say, "I am ready." I have persuaded
6 Judge Zemanka to let me know by this afternoon. You
7 might not know until tomorrow morning, and you might
8 hold the whole works up.

9 MR. PEACE: Judge, I would be in constant contact
10 with Mr. Sutter. I am not going to hold up this case,
11 Judge; there is no way I am going to do this with the
12 Court's consideration of permitting me of not having to
13 come in in the morning. If you show me a courtesy, I
14 am not going to return it with a discourtesy. I just
15 wouldn't do such a thing.

16 THE COURT: Well, you can play it the way you
17 want, but I am saying to you, if he shows and they are
18 all ready, and you are not here, as far as I am
19 concerned you are all engaged here.

20 MR. PEACE: I will be here.

21 THE COURT: Does anybody want to be notified
22 when Mr. Sutter appears here to make whatever
23 application he wishes to make to the Court?

24 MR. PEACE: Would the Court excuse us physically
25 at this moment?

1 go through two trials.

2 MR. WEINTRAUB: I would like to raise one other
3 thing, your Honor. We have been judging numerous
4 witnesses right now. Some witnesses are from out of
5 town and are here this morning, and it is going to be
6 very difficult to keep them here on a day-to-day basis.
7 If your Honor is agreeable, I would like to suggest that
8 the date Mr. Sutter appears, and again we select a jury
9 and open and begin evidence.

10 THE COURT: Mr. Weintraub, I don't know what I
11 can do on this thing. Mr. Wilson refuses to go ahead.
12 Mr. Sutter has not appeared. Judge Zemanka, with whom
13 I talked this morning, said he would make Mr. Sutter
14 available for a two- or three-day trial, but he didn't
15 think he could make him available for the lengthy trial
16 that is given here. Given those facts, I don't see
17 that I have anything I can do now, except wait and see.

18 MR. WEINTRAUB: Perhaps I didn't make myself
19 clear, your Honor.

20 THE COURT: It may be two and a half to three
21 weeks from now.

22 MR. WEINTRAUB: For that very reason, I would
23 request that the Court now indicate that when we do
24 proceed, when Mr. Sutter is here and ready and we
25 proceed to trial, that the first day be set aside for

1 selection of jurors and opening statements so that we
2 will have one day's breathing space to get out-of-town
3 witnesses here to go on the stand the next morning.

4 THE COURT: I think that would be agreeable to
5 everybody.

6 MR. NEWMAN: I have no problem with that.

7 MR. SONENSHINE: One day after he appears?

8 MR. LANG: That would be no problem. If I may,
9 by the time we really get this going, we would come in the
10 case, Judge, if we could get April 5th.

11 THE COURT: You may have two and a half weeks to
12 make up your mind, for all I know.

13 Mr. Sutter may run up \$1,000 a day. That is up
14 to you and Sutter.

15 MR. WILSON: May I clarify one thing, Judge.

16 Your Honor said Mr. Wilson refused. In all likelihood
17 I would refuse because of my wife's condition.

18 THE COURT: I can't force you on, Mr. Wilson.
19 If I could I would. I would.

20 MR. WILSON: And given my wife's current
21 condition, Judge, I would probably refuse, too.

22

23 (continued next page)

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25

1 MR. LANG: Judge, is there any way we can
2 work this out where we can start on Friday, select
3 the jury, like the Assistant United States Attorney
4 said, and start the testimony on Monday without
5 imposing this fine on Mr. Sutter and having us come
6 in on Friday.

7 THE COURT: I can't try cases on Friday.
8 I have motions, calculations. I have them stacked up.
9 I don't know to what extent on Friday, but you have
10 never been here on Friday. They are eye-openers.

11 MR. LANG: Well, suppose then, Judge, it was
12 a selection of the jury on Thursday and the opening
13 on Thursday and then go over to Monday to the
14 testimony.

15 THE COURT: You would certainly cut Mr.
16 Sutter's fine down to \$3,000.

17 MR. LANG: I am asking for an adjournment
18 to Thursday, Judge.

19 THE COURT: Not now.

20 MR. LANG: We would come in and know there
21 would be --

22 THE COURT. You can cut Mr. Sutter's fine
23 down to \$3,000 in any event. Is there anything else?
24 What are we going to do with the radical?

25 MR. WILSON: There is a conflict as to the

3 THE COURT: When did he get this gunshot
4 wound?

5 MR. NEWMAN: March 16th.

6 THE COURT: It was after the arraignment.

7 All right, both sides consenting, this Court will
8 grant the motion to sever at this time with respect
9 to Mr. Louis Rastelli.

10 MR. NEWMAN: Mr. Rastelli, you heard what I
11 said, and is this your understanding too based on
12 the discussion we discussed and based on the dis-
13 cussions we had on the telephone?

14 MR. LOUIS BASTELLI: Right.

15 THE COURT: It is his desire?

16 MR. NEWMAN: Yes.

17 THE COURT: The motion is granted and the
18 case is severed as to him.

19 MR. WEINTRAUB: Thank you, your Honor.

20 MR. NEWMAN: May he be returned to the Veterans'
21 Administration Hospital?

24 THE COURTS. VOL. 2. SURVEY.

29 Mr. Wilson. I speak with Mr. Pappa, Judge,

1 and he spoke with Mr. Sutter who is going to be
2 trying to contact your Honor's chambers, and the
3 gist of it was he would like your Honor to intercede
4 with Judge Semanka.

5 THE COURT: What?

6 MR. WILSON: To intercede with Judge Semanka.
7 To request him at least to allow him to come down
8 here regarding the contempt situation, and/or
9 substitution of counsel or even possibly, should it
10 come about, that Mr. Sutter is to remain in the
11 case for whatever reason, to allow him to have a
12 hiatus in the trial they have in Nassau County, where
13 I believe most of the prosecution's witnesses are
14 police officers.

15 THE COURT: I will wait until I hear from
16 him.

17 MR. WILSON: It is a non-jury case.

18 THE COURT: I understand that. I talked to
19 the judge this morning.

20 Mr. Sutter made a mistake by not telling Judge
21 Semanka that he had an engagement.

22 MR. BORISSEK: Upon Mr. Sutter's appearance
23 at the hearing, I would appreciate that the Govern-
24 ment be alerted as to whether or not he comes in.

25 THE COURT: Of course. We will alert all

1. **counsel.**

3 MR. LANG: I would like to know about that,
too.

4 THE COURT: I don't know. I don't really
5 want to recognize your appearance until you have
6 filed a notice of appearance. I don't want to be
7 charged with anything dealing with your office until
8 you have properly appeared in this case. As I
9 indicated to you at the start of this proceeding,
10 I think it was improper for you to do what you did.
11 To go to the Court of Appeals not as attorneys in
12 this case and make an application. Counsel, you are
13 pressing your luck pretty far. I don't feel that I
14 can do anything with respect to you, because frankly
15 I don't recognize your existence here in this case.

16 If I had been sitting on the Court of
17 Appeals and you had pulled something like this on me
18 I think you know what I would have done with you
19 based on what I said. I don't know how to make it
20 clearer to you. I don't think it is proper for an
21 attorney who is not retained to make an application
22 of the type that you made and not tell the Court of
23 Appeals that you are not an attorney of record.

24 MR. LAMOTHE: Judge, I am not arguing with you
25 about that. I said, "O.K.", the only thing I have

1 asked just at this last moment is when Mr. Sutter
2 comes in can we be notified?

3 THE COURT: I should think that Mr. Sutter
4 would be very happy to notify you. I would think at
5 this point you are in a large part his lifesaver.
6 I don't know how else to make it clear to you.

7 MR. NEWMAN: Would the Court permit Mr. Louis
8 Rastelli's family to visit with him for a minute
9 or two?

10 THE COURT: If it is all right with the
11 marshals, yes.

12 MR. NEWMAN: Is it all right?

13 THE MARSHAL: Yes.

14 THE COURT: Well, I have nothing further until
15 tomorrow morning at 9:30 unless Mr. Sutter can persuade
16 Judge Semanka to let him come over here. I don't
17 know whether to proceed with Mr. Woodfield's case
18 or not.

19 MR. WEINTRAUB: Thank you, your Honor.

20 MR. SLEPPIN: Thank you, your Honor.

21 MR. BORISZTEK: Thank you, your Honor.

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1 Excerpts From Pre-Trial Conference Of March 30, 1976 20

2 I am sure we have concurrent jurisdiction between
3 the parts of this court.

4 THE COURT: Well, I am not going to tell you
5 how to practice law. Certainly if you were confronted
6 with the trial of this case and you had an engagement
7 before Judge Judd I would apprise him of it forthwith,
8 I would not wait until the boom was lowered.

9 MR. SUTTER: As you have done.

10 THE COURT: As has happened here.

11 MR. SUTTER: Judge, I can assure you after
12 yesterday I am going to write letters all the time.

13 THE COURT: Well, maybe something has been
14 learned.

15 Let me go back to counsel. Is there anything
16 further you wish to put on the record here?

17 MR. MOFFATT: Nothing further other than
18 respectfully request that the Court give consider-
19 ation to adjourning the matter until Thursday so new
20 counsel can be substituted and the trial in Nassau
21 can continue and the matter before this Court can
22 continue.

23 THE COURT: Is a representative from the new
24 firm here?

25 MR. SUTTER: Yes, your Honor.

MR. LANG: I am here, your Honor.

1 THE COURT: When you left yesterday, as I
2 recall, there was a statement that your firm felt it
3 would be prepared to appear on Thursday and select
4 the jury.

5 MR. LANG: I said yesterday that we could come
6 in to the case on Thursday, yes.

7 THE COURT: This is what you felt was adequate
8 time with your preparation?

9 MR. LANG: I do not want to go that far, I did
10 not say that. I said we would come into the case on
11 Thursday and select the jury and go ahead on Monday.

12 THE COURT: Is it inconsistent with your request
13 that you made of the Court of Appeals? The Court has
14 requested me to accord you such time as you need up
15 to April 5th to prepare your case. As I indicated a
16 moment ago, if you were listening, I never made the
17 statement that was attributed to me, and I do not know
18 by whom, in the New York Law Journal this morning,
19 that I was going to defy that request. I have no
20 such intention and the reason I ask you the question
21 consistent with your application to the Court of
22 Appeals, are you going to be prepared on Thursday
23 morning?

24 MR. LANG: Yes, to select the jury and opening
25 statements, your Honor, yes.

1 THE COURT: So this would be adequate time for
2 you?

4 MR. LANG: Judge, the answer is yes for us to
come in Thursday and to start the case.

6 THE COURT: Well, I want to make sure that
7 there is no question about it, that there is going to
be no claim you have been short-changed on time.

9 MR. LANG: If I could get a month I would be
delighted.

10 THE COURT: You did not even apply to the Court
11 for a month, you applied for April 5. My question is,
12 consistent with your application to the Court of
13 Appeals, is Thursday sufficient time?

14 MR. LANG: Again, Judge, as I understand it
15 from what was said here the other day, if we open or
16 we select a jury on Thursday and opened and it would
17 go over until Monday --

18 THE COURT: That is right, I will not be sitting
19 on Friday.

20 MR. LANG: So there is no problem about us coming
21 in on Thursday and selecting a jury and opening and
22 continuing with the trial on Monday.

23 THE COURT: Indeed, on this Friday I said we
24 had motions and hearings, but I have a judicial confer-
25 ence on Friday that I should attend and I propose to

1 attend. That is the reason for my unavailability this
2 Friday.

3 All right, with that being the fact on that
4 aspect of the case, I would still go ahead.

5 MR. WEINTRAUB: Do I take that statement by
6 Mr. Lang, his firm is stating that they will, they
7 feel they have had adequate time to prepare this case
8 to proceed Thursday with the selection of a jury and
9 Monday with evidence?

10 THE COURT: That is my understanding of what
11 he says.

12 MR. WEINTRAUB: I just want to be sure.

13 MR. LANG: What you are doing, if I may say
14 so, your Honor, respectfully, is that everyone seems
15 to be saying we have got adequate time. I will tell
16 you what adequate time would be -- it would be a
17 month in a type of case like this. We asked for a
18 week and we said we would come in with the week.
19 We will go ahead with the trial as your Honor has
20 suggested, and further than that, I am not complain-
21 ing about it. I am saying we are going to do it
22 but you keep asking me if it is adequate. You know
23 that is a relative word, Judge, and frankly I have
24 not been in the case except for a couple of days
25 and there is quite a bit of preparation that has

1 to be done. But we will come in on Thursday and select
2 a jury and then go ahead with the trial on Monday.
3 I do not see where at this point I can really say any-
4 thing more than that.

5 THE COURT: I think what Mr. Weintraub wants
6 to make sure of is that you are not taking this posi-
7 tion because this Court is in any way or the Government
8 is in any way forcing you to do so.

9 I am not defying the request of the Court of
10 Appeals and it was never my intention to do so. Any-
11 body who was here yesterday would have recognized that
12 fact. If you feel from your firm's standpoint, as I
13 told you right from the start, you do not want to
14 come in here until April 5th and commence, that is
15 your decision to make.

16 Mr. Sutter is counsel of record and he has to
17 take whatever consequences that follow from your
18 decision.

19 MR. LANG: Judge, respectfully again, I say I
20 think I have made the decision for the firm that we
21 will come in on Thursday and do what we have to do.
22 Why press me on that? I do not quite understand that
23 from anyone.

24 MR. WEINTRAUB: Excuse me, your Honor, for
25 interrupting. When Mr. Cohen appeared before this

1 Court he indicated that with a week's adjournment his
2 firm would be adequately prepared to start the trial.
3 What we are asking is, does it make a difference to
4 the firm that we are going to start and select a jury
5 on Thursday instead of Monday, which would give him
6 a week as they requested? If that makes that much of
7 a difference, I would like to know about it now and
8 not find out on Monday.

9 MR. LANG: It makes no difference. If that is
10 the question, the answer is it makes no difference.

11 MR. SONENSHINE: Your Honor, may I make a
12 request? It is probably the worst moment in the world
13 to make this request but it is probably the only time
14 I will have to do it. I have a matter in the Southern
15 District of Florida, which should take me down there
16 Thursday. It is a matter of one day, that is all I
17 am asking for.

18 THE COURT: No.

19 MR. SONENSHINE: Could we start on Monday?

20 THE COURT: I am shaking my head negatively
21 and I mean it.

22 MR. PEACE: May I be heard, briefly? Might
23 we have a conditional adjournment for Monday if we
24 have a Transit strike Thursday? In that case we will
25 get killed in every way. It took me two hours to

1 In the light of the Court of Appeals' request
2 and in the interests of the defendant, Philip Rastelli,
3 this Court must grant up to a one-week continuance.
4 However, since Mr. Sutter's conduct herein has caused
5 a complete disruption of this Court's calendar, has
6 caused the unnecessary adjournment of other cases
7 both before the undersigned and other judges, has
8 inconvenienced the codefendants and their counsel,
9 and has required the unnecessary convening of a
10 jury panel for this case, this Court felt and feels
11 that it had and has no alternative but to impose,
12 and continue, a fine for each day of delay of the trial
13 in this case caused by such conduct. Accordingly,
14 the Court imposes a fine of \$500 a day for each day
15 of such delay, namely, Monday, Tuesday and Wednesday
16 of this week.

17 So ordered.

#5 18 MR. SUTTER: Judge, may I have ten days to
19 get a loan and pay the fine?

20 THE COURT: You certainly may.

21 MR. SUTTER: Thank you, sir. Am I formally
22 relieved of the case at this point?

23 THE COURT: I do not believe you are. I
24 predicated it all on Mr. Lang's statement which I
25 assume will be carried forward. I cannot relieve you

1 until you are actually substituted. If Mr. Lang's
2 statements do not prove to be true, Mr. Sutter, of
3 course --

4 MR. SUTTER: I am sure Mr. Lang would not
5 misrepresent to the Court.

6 MR. LANG: I will make a representation to
7 the Court that Saxe, Bacon & Bolan, P.C., will
8 substitute for Mr. Sutter and represent Mr. Philip
9 Rastelli at the trial commencing on Thursday of this
10 week.

11 THE COURT: Very well.

12 MR. SUTTER: May I be excused to return to
13 Nassau?

14 MR. WEINTRAUB: There is one other matter
15 I would like to put on the record before we adjourn
16 this trial.

17 THE COURT: Does Mr. Sutter have to stay?
18 He has asked to be excused.

19 MR. WEINTRAUB: No, sir.

20 THE COURT: You are excused.

21 MR. WEINTRAUB: There is, your Honor, in the
22 indictment in count five, alleging a substantive
23 Hobbs Act charge. The indictment states, in or
24 about the fall of 1971. We anticipate the proof
25 will be in and about the fall of 1970, your Honor,

1 this point, your Honor.

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2 THE COURT: At the appropriate time I suggest
3 the defense counsel, at the appropriate time when the
4 evidence, if any, is produced with respect to this
5 particular event, I request you point out to me
6 wherein you claim there is surprise and I will consider
7 it.

8 MR. SONENSHINE: Of course I do not know what
9 the evidence is they are referring to.

10 THE COURT: Neither do I.

11 MR. SONENSHINE: I would object at this time,
12 your Honor, to protect the record for my client and
13 I will object to such amendment.

14 THE COURT: I will allow the amendment subject
15 to the objection at the time to determine whether it
16 is well taken or not, in light of the fact you have
17 been given this warning.

18 Mr. Lang, is it your understanding that you
19 personally are going to try this case or Mr. Rosen
20 or somebody else?

21 MR. LANG: Well, on Thursday Mr. Cohen will
22 be trying this case that I know. After that it will
23 be either myself or Mr. Rosen. He is now engaged
24 and I do not know what his schedule will be. But
25 Mr. Cohen will be here on Thursday for the selection

1 Newman is going to be required to go ahead here at
2 all and other miscellaneous things rather than waste
3 time on Thursday morning.

4 The Government has just handed me questions
5 for the jurors. I assume none of you defense counsel
6 have similarly prepared questions for the jury.

7 MR. BORNSTEIN: The proposed voir dire to
8 supplement your Honor's standard questioning --

9 MR. LANG: Judge, I would like to first have
10 time to look at this; since we are just in this case,
11 to submit any questions may I have tomorrow morning,
12 your Honor?

13 THE COURT: Yes, I will give you whatever time
14 you feel is necessary. Just bear in mind if you
15 hand them to me on Thursday morning or even on Wed-
16 nesday late afternoon, since I have an engagement
17 on Wednesday night and I will not be riding the
18 railroad, it might be difficult for me to digest.

19 MR. LANG: I will try to get it to you tomorrow
20 morning, your Honor.

21 MR. SONENSHINE: I have not prepared any formal
22 questions and I do not even know I will have to.

23 THE COURT: You do not have to.

24 MR. SONENSHINE: What I meant is I do not know
25 that I will have any. If I have they will be rather

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